

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:)	CASE NO: 10-55072
)	Chapter 13
Mariano Frances Brantley)	
)	
Debtor(s).)	Judge Marilyn Shea-Stonum
)	
)	ADVERSARY NO:
)	
Mariano Frances Brantley)	
737 Grace Ave.)	
Akron, OH 44320)	
)	
Plaintiff)	<u>COMPLAINT TO DETERMINE</u>
)	<u>THAT CLAIM OF</u>
v.)	<u>CITIMORTGAGE AND/OR</u>
)	<u>MORTGAGEIT, INC. IS AN</u>
)	<u>UNSECURED CLAIM</u>
CitiMortgage)	
P.O. Box 183040)	
Columbus, OH 43218-3040)	
)	
Defendant)	
)	
and)	
)	
Mortgageit, Inc.)	
33 Maiden Lane, 6th Floor)	
New York, NY 10038)	
)	
Defendant.)	

Mariano Frances Brantley, the plaintiff herein, by and through the undersigned
counsel, for her complaint against CitiMortgage and Mortgageit, Inc. alleges as follows:

1. This is a core proceeding over which this Court has jurisdiction under 28 U.S.C. Sec. 157(b).

2. The plaintiff is the debtor in this chapter 13 case. The defendant, Mortgageit, Inc., claims or may claim to hold a secured claim against the debtor by virtue of a mortgage dated April 7, 2006 between the plaintiff as mortgagor and Mortgageit, Inc., as mortgagee. The defendant, CitiMortgage, claims or may claim to hold an interest in this mortgage as a servicing agent, assignee or in some other way. This mortgage is designated as reception number 55312917 in the records of the Summit County, Ohio Fiscal Officer, recording division, and was filed for record on April 20, 2006. Upon information and belief, the plaintiff states that she owes an approximate principal balance of \$14,300.23 on this indebtedness.

3. The alleged mortgage referred to in the preceding paragraph is a second mortgage on the plaintiff's residential real estate located at 737 Grace Avenue, Akron, Ohio.

4. GMAC holds the first mortgage encumbering the plaintiff's residential real estate. The debtor avers that she owes an approximate principal balance of \$74,931.11 on this first mortgage.

5. The value of the plaintiff's residential real estate referred to above, according to the appraisal of the Summit County, Ohio Fiscal Officer, attached hereto as Exhibit "A," is \$55,630.00.

6. Under the reasoning of *Lane v. Western Interstate Bancorp (In re Lane)*, 280 F.3d 663 (6th Cir. 2002), the plaintiff's obligation to the defendants, if any, is a wholly

unsecured claim and, as such, is subject to lien stripping.

WHEREFORE, the plaintiff requests the entry of an order declaring that her obligation owed to the defendants, if any, is a wholly unsecured claim and should be allowed and paid as a general unsecured creditor inside the plan. The plaintiff is further entitled to a judgment declaring that the above-referenced second mortgage is null, void and without any legal effect whatsoever.

/s/ Robert M. Whittington, Jr. 0007851
Attorney for the Plaintiff
159 S. Main St., Suite 1023
Akron, OH 44308
330 384 8484
fax 330 384 8953
elkwhitt@neo.rr.com

Survivorship Deed

I, ROBERT C. MALCOLM, a married man, the Grantor, for valuable consideration paid, grant, with General Warranty covenants, to TOMMY BRANTLEY and MARIANO F. BRANTLEY, the Grantees, for their joint lives, remainder to the survivor of them, whose tax mailing address is

The following Real Property: Situated in the City of Akron, County of Summit and State of Ohio:

And known as being all of Lot Number Five (5) in the Hassler Re-Subdivision as recorded in Plat Book 30, Page 70 of the Summit County Records of Plats. Said lot having a frontage of 45 feet on the Northeasterly side of Grace Avenue and extending back a distance of 193.96 feet on the Northwesterly line, 193.85 feet on the Southeasterly line and having a rear line of 45 feet as shown by the recorded plat.

The real property described above is conveyed subject to, and there are excepted from the general warranty covenants, all reservations, restrictions, easements, covenants and conditions of record, legal highways, zoning, building and other laws, ordinances and regulations, real estate taxes and assessments not yet due and payable, and rights of tenants in possession, if any.

Description approved by Tax Maps
Approval good for 30 days from

Also known as 737 Grace Avenue, Akron, Ohio 44320
PM: 68-16727; PPN: 03-01119-08-015.000
Prior Instrument Reference: 54991652

3/11/19 [Signature] 6-30-04

I, CANDI L. MALCOLM, wife of ROBERT C. MALCOLM, hereby release all rights of dower in the above-described premises.

Executed by us this 21 day of June, 2004.

[Signature]
ROBERT C. MALCOLM

[Signature]
CANDI L. MALCOLM

State of Ohio,) Before me, a notary public, in and for said County,
Summit County) personally appeared the above named
ROBERT C. MALCOLM and CANDI L. MALCOLM, who
acknowledged that they did sign the foregoing instrument, and that the same is their free
act and deed.

In Testimony Whereof, I have hereunto set my hand and official seal, at
Ohio, this 21 day of JUNE, 2004.

[Signature]
Notary Public

This instrument prepared by
Richard T. Schnars, Esq.
3205 Bretton Street, NW, Suite 300
North Canton, OH 44720
(330) 497-4501



CALVIN R. KING, Notary Public
Residence-Summit County
Statewide Jurisdiction, Ohio
My Commission Expires Dec. 2, 2008



TRANSFERRED IN COMPLIANCE WITH
SEC.319.202 REV.CODE
\$8292.50 \$332.00 FEE
Consideration
JOHN A. DONOFRIO By LB
Fiscal Officer Deputy Fiscal Officer
No of pages 1

TRANSFERRED
2004 JUN 30 PM 3:20
OFFICE OF THE CLERK
JUL 1 2004

E X H I B I T A

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John A. Donofrio

Fiscal Officer, County of Summit

Note: This is a live file and is subject to constant change.

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IAS4 - INTEGRATED ASSESSMENT SYSTEM REVIEW DOCUMENT

Summit County Auditor Division, OH - Tax Year 2010

Reference Year

OCT 15, 2010

10:40 AM

BASIC INFORMATION FOR PARCEL 6816727

PARCEL	6816727	ALT_ID	030111908015000	NO CARDS 1
OWNER	BRANTLEY MARIANO F			INFO
OWNER				---LISTER---
DESC.	HASSLER LOT 5 ALL			562 06-NOV-06
DESC.				RENTAL REG
DESC.		LUC 510	R - SINGLE FAMILY DWELLING, PLATTED	
ADDR.	737 GRACE AVE, AKRON 44320-			VAC/ABAND
SPEC FLAG				NBR 30100208
HOMESTEAD	No			2.5% REDUCTION Yes
DISTRICT	68 AKRON CITY-AKRON CSD			INTER-COUNTY 77-0530

LAND FOR PARCEL 6816727

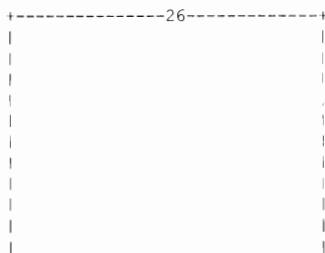
CODE	ACTUAL	BASE	DEPTH	UNIT	DEP/FAC	INCR/DECR	INFLUENCE	INFLU%	VALUE
01	45	40	194	325	1.12	160/160			15460

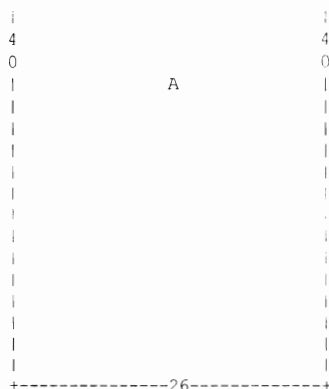
LOT CODE: 01 = HOUSE LOT

RESIDENTIAL CARD 1 OF 1 FOR PARCEL 6816727

STYHT	1	HT/AC	CENTRAL
CONST	ALUMINUM/VINYL	FUEL	GAS
MSRY TRIM		SYSTEM	FORCED AIR
TYPE	RANCH	ATTIC	NO
YR BUILT	1962	FINBSMT	
EFF YR		REC RM	
YRREMDLD		FRP PREFB	
TOT RM	5	FRPL OP/ST	
BEDRM	3	BSMT GAR	
FAMLYRM		PHYSICAL	64
FULL/BTH	1	FUNC DEP	
HALF/BTH		FUNC RSN	
TOT FIXTRS	5	ECON DEP	86
BSMT	FULL	ECON RSN	70
GFLA	1040	GRADE	060
SFLA	1040	COND (CDU)	AVERAGE (100%)
		PCT CMPL	

DESCRIPTION: RANCH ALUMINUM/VINYL 1 STORY WITH 1040 SQ FT GROUND FLOOR LIVING AREA AND 1040 TOTAL SQ FT LIVING AREA, BUILT ABOUT 1962. IT HAS 5 TOTAL ROOMS WITH 3 BEDROOMS, 1 FULL BATHROOM, A FULL BASEMENT, HEATING IS CENTRAL AND THE OVERALL CONDITION IS AVERAGE.



**SECONDARY:**

CODE	YR BLT	SQ FT	MODS	CD	%GOOD	%COMP	FUN UNIT	FUN/RS	ECO/RS	RCNLD
G20	1992	1		E	80		1			6400

G20 = GARAGE DETACHED FRAME/BLOCK

SUMMARY ALL CARDS FOR PARCEL 6816727

LAND:	15460	BUILDING:	40170	TOTAL:	55630
ASSESSED LAND:	5410	ASSESSED BLDG:	14060	ASSESSED TOTAL:	19470

SALES INFORMATION FOR PARCEL 6816727

DATE	DOC#	GRANTOR	AMT SALE	DESC	PARCELS
27-JUN-05	13870	BRANTLEY TOMMY & MARIANO F			1
30-JUN-04	13840	MALCOLM ROBERT C	82925	F	1
22-DEC-03	27490	SECRETARY OF HOUSING & URBAN D			1
30-OCT-03	23407	HALL PAMELA D			1
19-NOV-01	23634	OWENS LOUISE	65000	1 VALID	1
16-MAR-01	4556	OWENS LOUISE			0

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2010 SUMMARY INFORMATION FOR PARCEL 6816727

MAILING ADDRESS	LUC	510
BRANTLEY MARIANO F	CLASS	R
737 GRACE AVE	2.5%	Y
AKRON, OH 44320	HMSTD	N
APPRAISED VALUE 55,630	CAUV	N
TAXABLE VALUE 19,470	FOREST	N
BANK CODE 5319 GMAC MORTGAGE CORP	STUB	
TREAS CODE	CERT YEAR	N
CUR YR REFUND	DELQ CONTRACT	N
PRI YR REFUND	BANKRUPTCY	N
MONEY IN ESCROW	FORECLOSURE	N
MONEY IN PRETAX		

Beginning Tax Duplicate

<u>Where Do My Tax Dollars Go?</u>	<u>Voter Approved Levy Tax</u>
------------------------------------	--------------------------------

	First Half Charges	Second Half Charges
Realestate	0.00	0.00
Special Assessment	0.00	0.00
Total	0.00	0.00
Due Date	NOV 24, 2010	JUL 16, 2010

Total Tax Amount Due Reflects Payment & Adjustment To Date

	DELQ	1st HALF	2nd HALF
TOTAL REAL ESTATE AND SPECIAL CHARGES	0.00	0.00	0.00
P & I & ADJ	0.00	0.00	0.00
PAYMENTS	0.00	0.00	0.00
AMOUNT DUE	0.00	0.00	0.00
YEARLY AMOUNT DUE:			0.00

2010 TAX BILL DETAILS FOR PARCEL 6816727

DATE	SETTLE #	PROJ. ACTION CODE	1st HALF	2nd HALF
DELQ REAL ESTATE & ASSESSMENT TAX:			0.00	
ADJUSTMENT:			0.00	
DECEMBER INTEREST:			0.00	
AUGUST INTEREST:			0.00	
TOTAL			0.00	
REAL ESTATE CHARGES:			0.00	0.00
SPECIAL ASSESSMENT CHARGES:			0.00	0.00
ADJUSTMENT:			0.00	0.00
TOTAL CHARGES:			0.00	0.00
PAYMENTS:				
<u>DATE</u> <u>TYPE</u>				
TOTAL PAYMENTS:			0.00	0.00
FH/SH AMOUNT DUE:			0.00	0.00

SPECIAL ASSESSMENT:

PROJECT NAME	1st HALF	2nd HALF

GENERAL INFORMATION

JOHN A. DONOFRIO
FISCAL OFFICER, COUNTY OF SUMMIT
175 SOUTH MAIN ST.
AKRON, OHIO 44308

PLEASE DIRECT INQUIRIES CONCERNING PROPERTY VALUES TO

(330)-643-2645
(330)-643-2710
(330)-643-2661
(330)-643-2638

SPECIAL ASSESSMENTS
APPRAISAL INFORMATION
HOMESTEAD
GENERAL REAL ESTATE

PLEASE DIRECT INQUIRIES ABOUT YOUR TAX BILL INFORMATION TO

(330)-643-2867

TREASURER DIVISION PRE-PAYMENT PROGRAM

(330)-643-2600
(330)-643-2587
(330)-643-2589

**MONTHLY DELINQUENT CONTRACT PROGRAM
TAX BILL MAILING INFORMATION
PAYMENT INFORMATION**

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